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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,774	11/26/2003	Wayne Lederer	16739-002001	9660
26211	7590	09/18/2006	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			DABNEY, PHYLESHA LARVINIA	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,774

Applicant(s)

LEDERER, WAYNE

Examiner

Phylesha L. Dabney

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 2-8 and 13-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 12, 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to the Response to Election/Restriction received on 05 June 2006 in which claims 1-34 are pending.

Election/Restrictions

This application contains claims directed to the following patentably distinct species:

Species I: Figures 1-2 read on first embodiment with transducer on the outside of housing.

Species II: Figure 3 read on the second embodiment with transducer inside the housing.

Species III: Figures 4-5 read on the third embodiment of a stethoscope.

Claims 2-11 and 13-24 of Species II and III are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05 June 2006.

Applicant's election with traverse of claims 1, 12, 25-34 of Species I in the reply filed, is acknowledged. The traversal is on the ground(s) that the additional examination of Species II (claims 13-20) would not cause serious burden. This is not found persuasive because it is clear to the Examiner that multiple species are disclosed, which would require an extensive search beyond the previous search.

As per the manual of patent examination procedure, an Election of Species may be required when an application recites such a multiplicity of species that an unduly extensive and

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burdensome search and eventual office action on the merits would be necessary to search the entire scope of the claims [MPEP 808.01, 808.01(a)]. The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claim 34 is objected to because of the following informalities: the numeral '34' is missing from the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 25-27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ziarati (U.S. Patent No. 5,627,902).

Regarding claim 1, Ziarati teaches a magnetically inert headset (23) comprising: an ear cup (24); an outer set portion (26) disposed in the ear cup, and adapted to cover an ear; an inner set portion (25, 27) disposed in the outer set portion, including an ear insert adapted to fit into an ear canal and having a through-hole; and a pneumatic port (22, col. 7 lines 55-65) disposed in the hole in the ear insert to couple audible sound waves to the ear canal.

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Regarding claim 25, Ziarati teaches a non-magnetic headset system comprising: an audio transducer (21); a non-magnetic headset (23) including an ear insert (25, 27) having a through-hole and adapted to fit into an ear canal; and a pneumatic port (22, col. 7 lines 55-65) disposed in the hole in the ear insert to receive audible sound waves from the audio transducer.

Regarding claim 26, Ziarati teaches the system of claim 25 wherein the audio transducer comprises a magnetically inert transducer (21).

Regarding claim 27, Ziarati teaches the system of claim 26 wherein the magnetically inert transducer comprises a piezoelectric transducer (21, col. 6 lines 62-67).

Regarding claim 29, it discloses a method corresponding to the apparatus of claims 1 and 25-27. The method is inherent that it simply provides a logical implementation of the structure of claims 1 and 25-27.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziarati.

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Regarding claim 12, Ziarati does not teach that the ear cup has a removable piece to provide access to the ear insert and pneumatic port.

However, the Examiner takes official notice that it is known in the art to modify an ear cup such that a removable piece is provided for allowing easy access to electronics, etc., for repair or replacement thereof. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to structure the ear cup such that there is a removable piece in the invention of Ziarati for allowing easy access to components contained within the ear cup.

Regarding claim 28, Ziarati does not specifically teach the headset of claim 2 wherein the non-magnetic audio transducer comprises an electrostatic transducer.

However, Ziarati allows the transducer to be any well-known non-magnetic transducer (col. 6 line 62 through col. 7 line 5). It is known to use electrostatic transducers in a headset system as an alternate non-magnetic means for providing audible sound to the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any known non-magnetic transducer, such as electrostatic, in the invention of Ziarati for providing audible sound.

Regarding claim 31, Ziarati teaches that the ear cup has a sound absorbing cushion (col. 7 lines 48-51), but Ziarati fails to teach specifically the method of claim 29 comprising disposing the ear insert and pneumatic port in an ear cup having sound absorbing foam (cushion).

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However, the Examiner takes official notice that it is known for headset cushions to be made of foam. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use foam as the material used in the sound-absorbing cushion of Ziarati for providing conformity and comfort to the user.

Allowable Subject Matter

Claims 30 and 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P O Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

Hand-delivered responses should be brought to:

Customer Service Window
Randolph Building
401 Dulany Street

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Alexandria, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 6, 2006


PLD


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